



## **DEPARTMENT OF COMMERCE**

### **United States Patent and Trademark Office**

**[Docket No.PTO-P-2014-0032]**

### **Request for Comments on Virtual Marking**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is seeking public comment on virtual marking, which was provided for by the Leahy-Smith America Invents Act (AIA) as an alternative to physically marking patented articles as a means to provide notice to the public that such articles are subject to patent protection.

The AIA requires that the Director of the USPTO prepare, not later than three years from the date of enactment of the AIA, a report of: the effectiveness of virtual marking as an alternative to the physical marking of articles; whether such virtual marking has limited or improved the ability of the general public to access information about patents; and any legal issues or deficiencies that arise from such virtual marking.

**DATES:** To be assured of consideration, written comments must be received on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Written comments should be sent by email to [virtualmarking@uspto.gov](mailto:virtualmarking@uspto.gov). Comments also may be submitted by postal mail addressed

to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, ATTN: Soma Saha. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email.

Comments will be made publicly available after the comment period via the USPTO Internet Web site (address: <http://www.uspto.gov>). As such, information that is not desired to be made public, such as an address or telephone number, should not be included in the comments. The USPTO does not intend to respond to individual comments.

**FOR FURTHER INFORMATION CONTACT:** Soma Saha or Marina Lamm at the Office of Policy and International Affairs, by telephone at (571) 272-9300, by email at [virtualmarking@uspto.gov](mailto:virtualmarking@uspto.gov), or by postal mail addressed to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, ATTN: Soma Saha.

**SUPPLEMENTARY INFORMATION:**

United States patent law provides that marking a product with a patent number gives the public notice of a patent. Under 35 U.S.C. 287(a), if a patented product is not marked with the patent number by the patent owner, damages for infringement will be limited to the time period after the patent owner gives actual notice to an alleged infringer.

Section 16 of the AIA provides a new way to comply with the requirements for patent marking by allowing patentees to mark their products virtually rather than physically. Instead of printing the actual patent number on the product, businesses can display the

term “patent” or “pat.” along with an accompanying URL address of a Web site where the actual patent number will be located.

Section 16 of the AIA also requires the Director of the USPTO to prepare a report for Congress analyzing:

- (A) the effectiveness of “virtual marking” as an alternative to the physical marking of articles;
- (B) whether such virtual marking has limited or improved the ability of the general public to access information about patents;
- (C) the legal issues, if any, that arise from such virtual marking; and
- (D) the deficiencies, if any, of such virtual marking.

The report is due to Congress not later than three years after the date of enactment of the AIA, which is September 16, 2014.

Interested members of the public are invited to submit written comments they deem relevant to the above-mentioned issues. The USPTO would particularly welcome observations and comments on any of the following topics:

1. experiences with creating and maintaining adequate and effective virtual marking Web sites;
2. effectiveness of virtual marking, including experiences using virtual marking Web sites to locate relevant patent information;

3. challenges presented by virtual marking in providing sufficient notice to the public, including sufficiently associating patent numbers with the corresponding product within the virtual marking Web site;
4. economic impacts of virtual marking, including costs differences between physical marking and virtual marking;
5. advantages and disadvantages of virtual marking in comparison with physical marking;
6. identification of other practical or legal concerns with virtual marking; and
7. any other issues or experiences regarding virtual marking.

Commenters are requested to include information identifying how they are impacted by virtual marking, e.g., whether they are patent owners, licensees, or any other type of user, business, or manufacturer.

Dated: June 11, 2014.

**Michelle K. Lee,**  
*Deputy Under Secretary of Commerce for Intellectual Property and  
Deputy Director of the United States Patent and Trademark Office.*

**BILLING CODE 3510-16-P**

